Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1997

Gloria Byrne Alfieri,
and Vincent P. Alfieri,
Petitioners,

v.

M. F. Smith & Associates, Inc.,
and Michael F. Smith,
Respondents,

Petition For a Writ of Certiorari to the Supreme Court of New Jersey

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After having suffered financial losses greater than one million dollars ($1,000,000.00) and having been deprived of the ability to work in their profession for a period exceeding three years due to malicious prosecution by the respondents, the petitioners have been denied the right to pursue their case for malicious prosecution in the State of New Jersey because the State will not consider their damages as having constituted a "special grievance."

With regard to malicious prosecution cases, should not the State of New Jersey expand its definition of "special grievance" to include emotional stress and its consequences that limit one's ability to work, earn money and enjoy life.

Should emotionally sensitive individuals and/or those who have been financially prudent be treated with prejudice under the law?

Is the State of New Jersey violating the civil rights of the petitioners by denying them their right to free access to the court system?

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PETITION FOR A WRIT OF CERTIORARI

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of New Jersey entered in this case September 8, 1997.

OPINIONS BELOW

The opinion of the Superior Court of New Jersey, Law Division, is reproduced in the Appendix at page 10. The opinion of the Superior Court of New Jersey Appellate

Division is reproduced at page 7. The orders of the Supreme Court of New Jersey are reproduced at pages 17, 18 and 19.

JURISDICTION

The order of the Superior Court of New Jersey, Law Division, denying petitioners' complaint of malicious prosecution against respondents was entered December 19, 1994. Page 10. The judgment of the Court of Appeals was entered December 8, 1995. Page 7. The order of the Supreme Court of New Jersey dismissing petition for certification was entered on March 21, 1997. Page 17. The order of the Supreme Court of New Jersey denying the motion to vacate the order of dismissal and reinstate the notice of petition for certification was entered May 7, 1997. Page 18. The order of the Supreme Court of New Jersey denying the motion for reconsideration was entered September 8, 1997. Page 19.

The Petitioners do not know the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment and/or orders in question. They ask the Court's leniency regarding their ignorance. They seek this review by the Court to obtain justice in the matter.

RULES INVOLVED

The Petitioners do not know the constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case. They ask the Court's leniency regarding their ignorance. They seek this review by the Court to obtain justice in the matter.

STATEMENT

The matter emanates out of a binding arbitration process that was initiated by petitioner, Gloria Alfieri, in 1991 to obtain commissions that she believed were due her under the terms of a sales contract with respondents. Respondents falsely counter claimed millions of dollars in damages based on the alleged theft of files by petitioner. Although such claim was not covered by the sales contract and, therefore, not within the jurisdiction of the arbitration process, the counterclaim was nonetheless heard. The counterclaim was denied by the arbitrator in the absence of any testimony from the petitioner. As a direct result of this malicious prosecution, which took place over a period of approximately sixteen (16) months, the petitioners were emotionally incapacitated and unable to work in their profession for more than three years, resulting in losses in excess of one million dollars ($1,000,000).

Petitioners sued respondents in the Superior Court of New Jersey in Hunterdon County with regard to the damages they incurred as a result of the false counterclaim. Initially, in error, they sued for fraud in the matter, and subsequently, at the suggestion of the trial judge, amended their complaint to malicious prosecution. Their attempt to file the amended complaint for malicious prosecution was denied based on the assertion that the petitioners did not suffer a "special grievance." The petitioners appealed, and the Appellate Division upheld the lower Court's ruling. The petitioners filed a notice of petition for certification with the Supreme Court of New Jersey and, due to filing errors on the part of their attorney, the notice of petition for certification was denied. On September 4, 1997, the Supreme Court of New Jersey denied the petitioners' motion, submitted *pro se,* for reconsideration of the denial of the notice of petition for certification.

A. The Superior Court, Law Division Ruling

The Superior Court, Law Division held that the petitioners did not incur a special grievance.

"A special grievance consists of interference with one's liberty or property, such as the filing of a bankruptcy petition, granting of an injunction, filing of a lis pendens, or wrongful interference with the possession or enjoyment of property."

Page 15, quoting *Brien v. Lamazow,* 227, *N.J. Super.* 288, 303 (App. Div. 1988).

B. The Appellate Division's Ruling

The Appellate Division upheld the lower Court, stating:

"The sole issue involved in this appeal by Plaintiffs Gloria Byrne Alfieri and her husband Vincent Paul Alfieri is whether their proposed amended complaint asserted sufficient basis to constitute the 'special grievance' necessary to sustain a 'malicious prosecution'[1] claim against defendants M. F. Smith & Associates, Inc. and Michael F. Smith ("Smith") arising out of a counterclaim filed by Smith in an earlier action between the parties.

"We have reviewed carefully the briefs and appendices and conclude that the order of December 15, 1994, which denied plaintiffs' motion for leave to file a second amended complaint with prejudice, should be affirmed substantially for the reasons stated by Judge Herr in her written opinion appended to the order."

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[1] As we noted in *Penwag Property v. Landau,* 148 *N.J. Super.* 493, 500 (App. Div. 1977), *aff'd* 75 595 (1978), such an action is more correctly designated as one for malicious *use of process* when it arises out of a civil case.

REASONS FOR GRANTING THE WRIT

I. THE STATES ARE DIVIDED ON THE ISSUE.

As the Appellate Division noted:

> "New Jersey has not joined with those jurisdictions that embrace emotional distress and its consequences in satisfaction of the element of "special grievance"...*Compare Restatement (Second) of Torts* P. 674 (1977) *with* P. 677, which was adopted to recognize the view of a substantial minority of jurisdictions including this and neighboring states."

Yet, the majority of the states recognize emotional distress and its consequences as valid inclusions under "special grievance." In the case under discussion, the petitioners were emotionally incapacitated for more than three years as a result of the malicious prosecution waged against them. They lost more than one million dollars ($1,000,000) as a direct result of their incapacity to work, earn a living, and enjoy their lives.

It is only through their prior prudence and high savings rate that the petitioners did not have more severe financial repercussions. Although their financial harm was substantial, they managed to avoid declaring personal bankruptcy. It does not make sense that their prudence should be used against them. Surely the intent of the law is not to penalize hard working thrift-conscious citizens.

II. THE ISSUE IS IMPORTANT

The law seeks to treat all citizens equally, penalizing no one based on race, sex, sexual persuasion, etc. Should not the law also take into consideration the emotional make up of its citizens, an aspect that supposedly sets us apart from the lower

animals? Should the law penalize sensitive individuals by denying them remedy for attacks of malicious prosecution calculated to harm them emotionally and induce serious ramifications. The current New Jersey law inadvertently protects malevolence at the expense of the victim.

It is undesirable to chill free access to the Courts, and it is desirable to balance free access to the Courts by discouraging frivolous law suits. However, the "sensitive" victims must not have their free access "chilled." This would constitute bias and an assault upon their civil rights and equality under the law.

The petitioners are prepared to prove their damages and seek to have the opportunity to present their case.

CONCLUSION

For the reasons stated, certiorari should be granted.

Respectfully submitted,

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